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OFFICE OF PETITIONS

In re Application of
Alexei A. Karve, et al.
Application No. 10/731,535
Filed: December 9, 2003
Attorney Docket No. IBM-267

DECISION ON PETITION

This is a decision on the petition, filed January 21, 2010, which is being treated as a petition under 37 CFR 1.8(a), requesting withdrawal of the holding of abandonment in the above-identified application.

The petition is **GRANTED**.

This application was held abandoned for failure to timely respond to the Office action of November 20, 2006, which set a (3) month shortened statutory period for reply. A Notice of Abandonment was mailed on June 29, 2007.

Petitioner states that a timely reply was mailed via certificate of mailing on May 20, 2007, which included the following papers: a Request for Continued Examination (RCE) and a request for three (3) month extension of time. Petitioner has submitted a copy of the previously mailed correspondence, which bears a certificate of mailing dated May 20, 2007, which would have rendered the reply timely if received.

The file record includes the originally submitted papers. However, the papers were received at the Office on June 26, 2007. Failure to timely receive correspondence which includes a certificate of mailing or certificate of facsimile transmission is addressed in 37 CFR 1.8(a), reproduced below:

Except in the situations enumerated in paragraph (a)(2) of this section or as otherwise expressly excluded in this chapter, correspondence required to be filed in the U.S. Patent and Trademark Office within a set period of time will be considered as being timely filed if the procedure described in this section is followed. The actual date of receipt will be used for all other purposes.

(1) Correspondence will be considered as being timely filed if:

(i) The correspondence is mailed or transmitted prior to expiration of the set period of time by being:

(A) Addressed as set out in § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail;

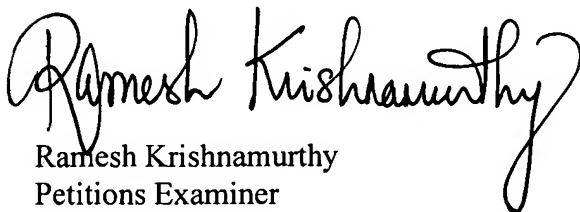
(B) Transmitted by facsimile to the Patent and Trademark Office in accordance with § 1.6 (d); or

(C) Transmitted via the Office electronic filing system in accordance with § 1.6(a)(4); and

(ii) The correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

The petition satisfies the above requirements of 37 CFR 1.8(a). Accordingly, the holding of abandonment for failure to timely file a reply to the Office action of November 20, 2006 is hereby withdrawn and the application restored to pending status.

This application is being referred to Technology Center AU 2168 for appropriate action in the normal course of business on the RCE received June 26, 2007.



Ramesh Krishnamurthy
Petitions Examiner
Office of Petitions